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APPLICATION NO.	F	LING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/069,949	•	03/07/2002	Rainer Tilse	4597-039	2820
26530	7590	05/25/2004		EXAM	INER
LADAS &			WILSON, JOHN J		
224 SOUTH MICHIGAN AVENUE, SUITE 1200 CHICAGO, IL 60604				ART UNIT	PAPER NUMBER
,				3732	

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

		<u> </u>					
	Application No.	Applicant(s)					
	10/069,949	TILSE, RAINER					
Office Action Summary	Examiner	Art Unit					
	John J. Wilson	3732					
The MAILING DATE of this communication app Period for Reply	pears on the cover sheet w	ith the correspondence address					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).							
Status							
2a) ☐ This action is <b>FINAL</b> . 2b) ☐ This 3) ☐ Since this application is in condition for allowa							
Disposition of Claims							
<ul> <li>5)  Claim(s) 14-16 is/are allowed.</li> <li>6)  Claim(s) 3-13 is/are rejected.</li> <li>7)  Claim(s) is/are objected to.</li> </ul>	4a) Of the above claim(s) is/are withdrawn from consideration.  Claim(s) 14-16 is/are allowed.  Claim(s) 3-13 is/are rejected.						
Application Papers							
<ul> <li>9) The specification is objected to by the Examiner.</li> <li>10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</li> <li>11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.</li> </ul>							
Priority under 35 U.S.C. § 119							
<ul> <li>12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</li> <li>a) All b) Some * c) None of:</li> <li>1. Certified copies of the priority documents have been received.</li> <li>2. Certified copies of the priority documents have been received in Application No.</li> <li>3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).</li> <li>* See the attached detailed Office action for a list of the certified copies not received.</li> </ul>							
Attachment(s)  1) Notice of References Cited (PTO-892)  2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 3/25/04.	Paper No	Summary (PTO-413) s)/Mail Date nformal Patent Application (PTO-152) 					

### **DETAILED ACTION**

# Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3, 4, 9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirdes (4768955). Hirdes shows a supply container 5, nozzle 10, 11, means for conveying 3, handle 2 and ultra sound generator 50, column 4, lines 60-67. The oscillator 50 will inherently set the nozzle into oscillation. All of the claimed structure being shown, to use with for filling a synthetic resin is an obvious matter of intended use of a known structure to one of ordinary skill in the art. As to claims 9 and 12, see actuating button 6. As to claim 11, Hirdes inherently shows a dental handpiece because it is a dental instrument to be hand held. It is noted that the present disclosure is silent on the definition of the term "handpiece".

Claims 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirdes (4768955) in view of Nielsen (3890713). Hirdes shows the structure as described above, however, does not show an exchangeable supply container. Nielsen shows an exchangeable supply container and nozzle, see Figs. 7-9. It would be obvious to one of ordinary skill in the art to modify Hirdes to include an exchangeable container as shown by Nielsen in order to more conveniently refill the handpiece. As to

Application/Control Number: 10/069,949

Art Unit: 3732

claim 8, Hirdes does not show the use of a pneumatically excited oscillator. Nielsen shows creating vibrations with a pneumatic oscillator, column 2, lines 62-64. It would be obvious to one of ordinary skill in the art to modify Hirdes to include the use of a pneumatic oscillator as shown by Nielsen in order to make use of art known equivalent ways of producing vibrations. It is also noted that there is no disclosed criticality to the type of oscillator used.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hirdes (4768955) in view of Werly (5007837). Hirdes shows the structure as described above, however, does not show the use of a piezoelectric oscillator. Werly shows creating vibrations with a piezoelectric oscillator 41. It would be obvious to one of ordinary skill in the art to modify Hirdes to include the use of a piezoelectric oscillator as shown by Werly in order to make use of art known equivalent ways of producing vibrations. It is also noted that there is no disclosed criticality to the type of oscillator used.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hirdes (4768955) in view of Balamuth et al (3809977). Hirdes shows the structure as described above, however, does not show the use of a magetostrictive oscillator.

Balamuth shows creating vibrations with a magetostrictive oscillator, column 7, lines 28-34. It would be obvious to one of ordinary skill in the art to modify Hirdes to include the use of a magetostrictive oscillator as shown by Balamuth in order to make use of art

known equivalent ways of producing vibrations. It is also noted that there is no disclosed criticality to the type of oscillator used.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hirdes (4768955) in view of Fishburne, Jr. (5839895). Hirdes shows the structure as described above, however, does not show the use of a spray gun. Fishburne teaches that the structure produces a spray, column 5, lines 1-5. It would be obvious to one of ordinary skill in the art to modify Hirdes to include producing a spay as shown by Fishburne in order to make use of known properties of art known delivery devices. It is further noted that the present disclosure does not specify any specific type of spray gun, therefore, to call the above combination a spray gun is an obvious matter of choice to the skilled artisan.

# Allowable Subject Matter

Claims 14-16 are allowed.

### Response to Arguments

Applicant's arguments filed March 25, 2004 have been fully considered but they are not persuasive. The shown structure being shown, the intended use with a different material does not render the known structure patentable. Applicant argues the individual differences of Nielson, Werly, Balamuth and Fihsburn, however, the above

rejections are based on combinations of references which properly show all of the claimed elements.

#### Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Application/Control Number: 10/069,949

Art Unit: 3732

Any inquiry concerning this communication should be directed to John Wilson at telephone number (703) 308-2699.

John J. Wilson
Primary Examiner
Art Unit 3732

jjw May 14, 2004 Fax (703) 872-9306

Work Schedule: Monday through Friday, Flex Time